

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM TACON, as administrator of
CARIBBEAN COMMERCIAL INVESTMENT
BANK LTD.

No. _____

Plaintiff,

COMPLAINT

-against-

ROBERT CROMWELL and
SARIT L. ROZYCKI,

Defendants.
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Plaintiff William Tacon, as administrator of Caribbean Commercial Investment Bank Ltd. ("CCIB"), by and through his undersigned attorneys, Geoffrey T. Raicht, P.C., for his Complaint against Defendants Robert Cromwell ("Cromwell") and Sarit L. Rozycki ("Rozycki," or collectively with Cromwell, "Defendants"), alleges as follows:

THE PARTIES

1. Plaintiff is the court-appointed administrator of CCIB, an Anguillan corporation with a principal place of business in Anguilla. Mr. Tacon was appointed by the High Court of Justice Anguilla Circuit as Administrator of CCIB on February 22, 2016. In that capacity, he took control of all operations of CCIB, and has continuously and dutifully pursued and recovered assets for the benefit of CCIB's creditors.

2. Defendants Cromwell and Rozycki are each natural persons who are citizens of the State of New York, residing at 54 Sheldrake Road, Scarsdale, New York 10583.

3. Non-party Indigo Holdings Ltd. ("Indigo") is a corporation organized under the laws of Anguilla. Defendants are sole shareholders of Indigo.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(2). CCIB is an Anguillan corporation with a principal place of business in Anguilla and therefore a citizen or subject of a foreign state, and Defendants are citizens of the State of New York. The amount in controversy exceeds \$75,000, exclusive of interests and costs.

5. Venue is proper under 28 U.S.C. § 1391(b)(1) as Defendants reside in this district and are both residents of the State of New York.

FACTS

6. This is an action by CCIB to enforce its rights in connection with the guarantee of a loan agreement by Defendants.

7. On November 11, 2005, Defendants entered into a Continuing Guarantee (the “Guaranty”) with CCIB, under which they were made Guarantors and “jointly and severally unconditionally guarantee[d] and promise[d] to pay to [CCIB]...any and all indebtedness of Indigo Holdings Ltd.” to CCIB up to \$667,000.00. Pursuant to Section (2) of the Guaranty, any payment by Indigo would not reduce the Guarantors’ maximum obligation under the Guaranty. A copy of the Guaranty is annexed hereto as Exhibit A.

8. Section (3) of the Guaranty provided that Defendants’ “obligations hereunder are joint and several, and independent of the obligations of [Indigo], and a separate action or actions may be brought and prosecuted against Guarantors whether action is brought against [Indigo] or whether [Indigo] be joined in any such action or actions; and Guarantors waive the benefit of any statute of limitations affecting their liability hereunder or the enforcement thereof.”

9. Further, under Section (9) of the Guaranty, Defendants “agree[d] to pay a reasonable attorney’s fee and all other costs and expenses, which may be incurred by [CCIB] in the enforcement of this Guaranty.”

10. On December 20, 2005, Indigo entered into a loan with CCIB in the principal amount of \$667,000.00, interest at 9 percent per annum, and a term of 246 months commencing on March 10, 2006 (the “Loan”).

11. The purpose of the Loan was to finance construction of a villa. The Loan was secured by the real property legally recorded as Registration Section West End, Block 17709 B, Parcel 177/3, Aguilla (the “Property”). A copy of the Loan is annexed hereto as Exhibit B.

12. In February 2012, Indigo defaulted on the terms of the Loan by failing to make the required payments due thereunder. Under the Loan, if a default in payment of any part of a principal or interest installment were to occur, then the whole sum of principal and interest would become “immediately due and payable at the option of the lender without notice.” Furthermore, Indigo was subject to a delinquency charge for each installment in default 10 days in an amount equal to 5% of each installment and any amount payable at the same time.

13. Despite CCIB’s multiple attempts over many years to work with Indigo to obtain satisfaction of the Loan indebtedness, Indigo failed to pay the principal and interest due, and by September 2021, owed CCIB over \$1,080,000 in principal, interest, and penalties.

14. On November 4, 2022, CCIB conducted an auction of the Property in accordance with Anguillan law, which resulted in a successful credit bid by CCIB.

15. After application of the credit bid, the total amount due under the Loan as of August 31, 2023 was \$610,507.31, representing \$568,457.06 in unpaid principal and \$42,050.25 in unpaid interest.

16. By letters dated July 28, 2023 and August 28, 2023, CCIB demanded that Defendants satisfy their obligation under the Guaranty to pay Indigo's indebtedness, which continues to accrue additional interest daily. Defendants have failed to pay the amount due.

**FIRST CAUSE OF ACTION
(BREACH OF GUARANTY)**

17. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

18. Plaintiff entered into a valid and enforceable guaranty agreement with Defendants.

19. Plaintiff performed all of its obligations under the agreement.

20. Defendants breached the guaranty by failing to pay Plaintiff the remaining amount due under the Loan.

21. As a result, Plaintiff has been damaged in an amount not less than \$610,507.31, which amount continues to grow due to interest and penalties, plus the costs of attorneys' fees and expenses to prosecute this action.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff is entitled to a judgment against Defendants as follows:

- a. Actual damages in an amount not less than \$610,507.31;
- b. Prejudgment interest at the New York statutory rate of 9% per annum;
- c. Attorneys' fees, costs, disbursements, and such other and further relief as the Court deems just and proper.

Dated: Rye, New York
September 13, 2023

GEOFFREY T. RAICHT, P.C.

By: 

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